))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 730 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

THAKORE NAVALSING RAMSING

Appearance:

MR ST MEHTA, APP, for Petitioner

MR VH DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

Date of decision: 17/06/1999

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

In this appeal under section 378 of the Code of Criminal Procedure, 1973 (Cr.P.C.) against the judgment and order of acquittal passed by the learned Additional Sessions, Mehsana in Sessions Case No.127/84, recorded on 16.1.85, the appellant State has questioned the legality and

validity of the acquittal order.

The respondent-original-accused was charged for having committed offences punishable under sections 302 and 363 of the Indian Penal Code (IPC) in Sessions Case No.127/84. It was the prosecution case that the accused had a motive to commit the murder of deceased minor Kailas, aged about 6 years, daughter of complainant, Sartanji, and on 24.5.84 in the evening at about 5 O' clock, the accused was alleged to have visited the house of the complainant and out of enmity, kidnapped the deceased from the lawful guardianship of the complainant and took her to a field situated in village Chikna in Kharelu Taluka of Mehsana District and killed the girl by pressing the throat.

The complainant, Sartanji, was the resident of village Jaspur of Kharelu Taluka where he was doing agricultural work along with his wife Kanta and they had three children. Deceased Kailas was the youngest daughter. It was alleged by the prosecution that the deceased was killed by the accused because the engagement of the sister of the complainant Lilaben with the accused was broken and the accused entertained an apprehension that it was done at the instance of the complainant. Therefore, he had kidnapped the minor and done away with her.

The prosecution evidence was analysed by the Trial Court and upon analysis and examination of the evidence, the Trial Court acquitted the accused from the charges levelled against him by the impugned judgment recorded on 16.1.85 in Sessions Case No.127/84. That is how this acquittal appeal under section 378 of Cr.P.C. is preferred, at the instance of the State.

It is an admitted fact that there was no direct evidence to connect the alleged culpability of the accused with the charges levelled against him. The only circumstance which the prosecution relied on against the accused was in the form of or in the nature of the deceased having been seen with the accused last. No other cogent and dependable circumstances are shown by the prosecution. The Trial Court, therefore, upon assessment of the evidence afforded the accused with the benefit of doubt. The circumstance of having last seen is one of the circumstantial evidence. But, ordinarily, in absence of any corroborative and supporting material, it would not be treated as safe to base the conviction solely on that ground. It is, in this context, that the learned Additional Sessions Judge has given the benefit of doubt

to the accused. The ground on which the benefit of doubt is given and the resultant acquittal is recorded, in the circumstances of the case and the facts born out from the evidence on record could not be said to be unjust, unreasonable or perverse so as to warrant interference of this Court under section 378 of the Cr.P.C. It is a settled proposition of law that the grounds or views upon which the acquittal has been founded upon after the appraisal of the evidence cannot be overlooked merely because a better and other view is conceivable and perceivable by the appellate Court. We have not been able to convince ourselves to hold that the impugned judgment and order of acquittal is in any way unreasonable or perverse. Since we, broadly, agree with the reasons and the ultimate conclusion recorded in the impugned judgment, we do not deem it expedient to divulge and reiterate the same while appreciating the merits of the appeal.

In our opinion, there is no fit and appropriate case for interference with the reasoning assigned and the ultimate conclusion recorded by the Trial Court while passing the acquittal order against the respondent-accused. Hence the appeal deserves to be dismissed. Accordingly, it is dismissed. The bail bond of the accused shall stand, obviously, cancelled.

.....

(vjn)